# Award No. 11129

# Docket No. MW-10456

## NATIONAL RAILROAD ADJUSTMENT BOARD

## THIRD DIVISION

Robert O. Boyd, Referee

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**PARTIES TO DISPUTE:**

**BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES**

**SOUTHERN PACIFIC COMPANY (Pacific Lines)**

**STATEMENT OF CLAIM:** Claim of the System Committee, of the Brotherhood that:

(1) The Carrier violated the effective agreement when it failed and refused to properly compensate the Section Gang assigned to Section 1-D at San Francisco at the applicable B&B rates of pay for fencing work performed on March 11 and 12, 1957.

(2) Section Foreman Dan Perea and Section Laborers Leon N. Chico, Eduardo S. Meraz, Catarino Puente, Jose A. P. Rengel and Morris P. Ware each be allowed the difference between what they were paid at their regular rates and what they should have been paid at the B&B rates applicable to the fencing work which they performed.

**EMPLOYES' STATEMENT OF FACTS:** The claimants are foreman and section laborers, respectively, assigned to Section 1-D with headquarters located in San Francisco, California. Section Gang No. 1-D works an assigned work week of Monday through Friday, exclusive of holidays, with rest days of Saturday and Sunday.

The B&B Supervisor had instructions to remove about 1000 lineal feet of fence within the vicinity of 4th Street and 5th Street, San Francisco in order to permit the rearrangement of some tracks in that area. Before the B&B Supervisor could arrange to have the fence removed, the Roadmaster became impatient. On the dates of March 11 and 12, 1957 the claimants were assigned by the Roadmaster to remove about 1000 feet of fence in the area of the old supply depot on Channel Street between 4th and 5th Streets in San Francisco, California. The fence was constructed of timber posts to which woven wire, commonly known as "hog wire" was attached. The claimants consumed a total of twelve hours each in the performance of this work. The instant claim was presented and progressed in the usual and customary manner, the Carrier has declined the claim.

The Agreement in effect between the two parties to this dispute dated January 1, 1953, together with supplements, amendments, and interpretations thereto are by reference made a part of this Statement of Facts.

With reference to Rule 54, claimants in this case worked only their own positions on the dates of this claim and performed service no different than has been required of section forces on the Coast Division for many years at their regular rates of pay.

Attention is directed to Award 7583 which denied a similar claim prosecuted by petitioner.

**CONCLUSION**

Carrier asks that the claim be denied.

All data herein submitted have been presented to the duly authorized representative of the employes and are made a part of the particular question in dispute.

(Exhibits Not Reproduced.)

**OPINION OF BOARD:** It was necessary to remove approximately 900 feet of woven wire fence at the Mission Bay Yard on the Carrier's Coast Division. To accomplish this employes in the Track Sub-Department were used. It is contended that such employes should have been paid at the B&B rates as the work involved was "fencing work" and such work belongs to the B&B Sub-Department. This raises the question of whether or not the Scope Rule, paragraph (a), which lists the positions of "Foreman and assistant foreman of . . . fence gang" and "employes coming under the supervision of such foreman", classifies "fence work" as work of the B&B Sub-Department and accrues solely to employes of that seniority classification. In order for Claimant to prevail, the affirmative of this proposition must be demonstrated. The specific work involved here was the work of removing a fence.

In the Agreement now before the Board for interpretation the scope rule does not describe the work covered except by reference to classes of employes. Under such circumstance, in order to determine what specific work belongs to a specific class, the Board must resort to tradition, historcal practice and custom. [see Award 10389 (Dugan)]. In the Employes' submission they assert that "Fence work has historically and traditionally been recognized as being work of the B&B Sub-Department". No proof of this assertion is offered. The Carrier denies it is so, and offers a number of exhibits to show that section gangs have been used to remove right-of-way fences. The employes do not deny this, but assert they have no knowledge of a practice of permitting fencing to be "contructed" by Track Department forces. While under the rules of the Agreement seniority is confined to the sub-department in which employed and is not confined to the class in which employed, it is worth of note that on the Coast Division no fence gang, as such, has ever been established.

There is one other point to note on this question. If the skill and tools normally used in the performance of the work of a class is shown to have been used in the performance of specific work, then it may be argued that such work belongs to a specific class. Here there is no showing what, if any, particular skill or tools were used in removing the fence.

For these reasons and upon a review of the entire record we have found that the Claimants have not sustained the burden of showing that by practice and custom the work of removing a fence is solely the work of the

B&B Sub-Department; and, therefore, conclude that the Agreement was not violated when employes in the Track Sub-Department performed the work described in this docket.

**FINDINGS:** The Third Division of the Adjustment Board, after giving the parties to this dispute due notice of hearing thereon, and upon the whole record and all the evidence, finds and holds:

The the Carrier and the Employes involved in this dispute are respectively Carrier and Employes within the meaning of the Railway Labor Act, as approved June 21, 1934;

That this Division of the Adjustment Board has jurisdiction over the dispute involved herein; and

That the Agreement was not violated.

AWARD

Claims denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 12th day of February 1963.